August 9, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] G[redacted]-A[redacted]

This case is before the Board of Appellate Review on an appeal brought by R[redacted] G[redacted]-A[redacted] from an administrative determination of the Department of State that he expatriated himself on February 11, 1965 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The issues presented on appeal are (1) whether appellant performed the expatriating act voluntarily, and (2) if he did so, whether he had the intention of relinquishing his United States nationality. We find that appellant's declaration of allegiance to Mexico was made freely, and further that the expatriating act was accompanied by an intention to relinquish his United States citizenship.

I

Appellant was born on [redacted], and thereby acquired United States citizenship, Since his parents were Mexican citizens he also acquired Mexican citizenship in accordance with the laws of that country. In 1943 appellant moved to Mexico with his mother and has resided there since.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides:

> Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --
>
> . . .
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof..,.

In 1964 appellant graduated from medical school and thereafter applied for a certificate of Mexican nationality. In so doing he made a formal declaration of allegiance to Mexico and expressly renounced his United States citizenship, A certificate of Mexican nationality was issued to appellant on February 11, 1965.

On January 12, 1983 appellant visited the Consulate General at Cuidad Juarez, Mexico to register as a United States citizen. It was at this time that appellant's performance of a potentially expatriative act came to the attention of United States authorities. Appellant completed a questionnaire for the purpose of determining his citizenship status,

On February 3, 1983 the Mexican Department of Foreign Relations confirmed that appellant had applied for and had been issued a certificate of Mexican nationality. 2/

As required by section 358 of the Immigration and Nationality Act 3/ the Consulate General prepared a certificate of loss of nationality in appellant's name on May 31, 1983.

2/ Diplomatic Note No. 7200539. Department of Foreign Relations to the United States Embassy, Mexico, D.F., February 3, 1983.

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

The Consulate General certified that appellant acquired the nationality of both the United States and Mexico at birth: that he made a formal declaration of allegiance to Mexico, and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department of State approved the certificate on June 28, 1983, approval being an administrative determination of loss of nationality from which a proper and timely filed appeal may be brought to this Board.

On September 2, 1983 appellant initiated this appeal.

Appellant's principal ground for the appeal is that he did not sign the application for a certificate of Mexican nationality voluntarily. He alleges that he was forced into performing the expatriating act in order that he might be licensed to practice medicine in Mexico,

II

Section 349(a)(2) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state, Loss of citizenship will not ensue, however, unless the expatriating act in question was performed voluntarily and in accordance with applicable legal principles, Perkins v. Elg, 307 U.S. 325 (1954); Nishikawa v. Dulles, 356 U.S. 129 (1958).

It is undisputed that appellant made a formal declaration of allegiance to Mexico in the manner prescribed by Mexican law and thus brought himself within the purview of section 349(a)(2). Appellant argues, however, that inasmuch as he made a formal declaration of allegiance to Mexico under economic duress he performed the act involuntarily, More specifically, appellant claims that having decided to practice medicine in Mexico, he was required by Mexican law to obtain a certificate of Mexican nationality, a procedure that entailed swearing an oath of allegiance to Mexico, Hence, he was forced by Mexican law to choose between his United States and Mexican nationalities,

Appellant bears the burden of proving that his performance of an allegedly expatriating act was involuntary, Section 349(c) of the Immigration and Nationality Act establishes a legal presumption that performance of an act designated as expatriating under the statute, was done voluntarily, though the

presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act was not done voluntarily. 4/

The test for determining whether a United States citizen performed an expatriating act under duress was stated in Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948). There the Court states:

> If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is no authentic abandonment of his own nationality.

According to the principle established in Doreau, it is clear that two elements must be shown to exist in order for performance of an expatriating act to have been deemed to have been performed involuntarily: the circumstances under which a person acted must have been "extraordinary", and the actor must have been "forced" by circumstances beyond his control to perform the expatriating act,

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4/ Section 349(a) of the Immigration and Nationality Act, 8 U.S.C 1481(c), reads:

> Sec. 349(c). Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

In Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971), the Court made clear that in order for the defense of duress to prevail the actor must demonstrate that the duress he alleges was not of his own making. The Court stated that "the opportunity to make a decision based upon Personal choice is the essence of voluntariness." Id. at 1250.

In the instant case, there is no evidence that the appellant was subjected to "extraordinary circumstances," e.g., fear of imprisonment for not obeying the conscription laws of the country of one's nationality; fear of loss of ration cards for failure to vote in a foreign election; fear for economic survival of one's self or close relative if one did not take the only available job, to wit, employment in a foreign government. 5/

Appellant was pursuing a career in medicine, a profession he wished to practice in Mexico. Under Mexican law, medicine appears to be a profession that one may practice only if one is a citizen of Mexico. In order to prove his Mexican citizenship, appellant was required to apply for a certificate of Mexican nationality. As noted above, prior to obtaining such certificate one must make a declaration of renunciation of one's previous nationality and making a formal declaration of allegiance to Mexico. Pursuant to Mexican law, persons who are nationals of Mexico and another country must, after the age of eighteen choose one or the other. Appellant was thus faced with the necessity of deciding whether to retain his United States citizenship or his Mexican nationality. He chose to relinquish his United States citizenship and retain that of Mexico.

There can be little doubt that appellant made a personal choice, and any duress that appellant may have felt was, similar to that of the petitioner in Jolley, supra, self-generated., Unlike many petitioners in previous cases who had successfully pleaded that their expatriating act was performed under duress,

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5/ See Nishikawa v. Dulles, 356 U.S. 129 (1958); Takano v. Dulles, 116 F. Supp. 307 (District of Hawaii, 1953); Insogna v. Dulles, 116 F. Supp. 473 (D.D.C., 1956); Stipa v. Dulles 233 F. 2d 551 (3rd Cir. 1956).

the duress this appellant felt was of his own making, While it is true that Mexican law required him to choose the citizenship of that country or the United States no one forced him to choose Mexican nationality; he could have decided to retain his United States citizenship and planned a career that did not require him to forswear his United States citizenship.

As a matter of law, appellant had an alternative. His declaration of allegiance to Mexico was therefore the product of personal choice and consequently voluntary.

III

Although we have determined that appellant voluntarily made a formal declaration of allegiance to Mexico, the issue remains as to whether he did so with the intention of relinquishing his United States citizenship. It is well established that expatriation will not occur unless the trier of fact is able to conclude on all the evidence that the citizen not only voluntarily commited an expatriating act prescribed by the Statute but also intended to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

In Terrazas, the Court reiterated that section 349(c) of the Immigration and Nationality Act requires that the government prove by a preponderance of the evidence that the citizen intended to divest himself of United States citizenship. 444 U.S. at 261. Such intent, the Supreme Court stated may be discerned from a person's words or be found as a fair inference from proven conduct, Id. at 260.

Intent is to be determined as of the time the expatriating act was performed. Terrazas v. Haig, 653 F. 2d 685 (7th Cir. 1981).

While making a formal declaration of allegiance to a foreign state can be highly persuasive evidence of one's intent to relinquish American nationality, standing alone, it is not conclusive evidence of such intent. Vance v. Terrazas, 444 U.S. at 252.

In the instant case, appellant on January 12, 1983 stated in his application for a certificate of Mexican nationality in part as follows:

> I expressly renounce United States nationality, as well as any submission, obedience or fidelity to any foreign governments of which I may have been a citizen, especially to the Government of the United States of America....I renounce any protection alien to the laws and authorities of Mexico,...

It is evident that appellant is a mature, educated and professional man, And the renunciatory declaration and pledge of allegiance to Mexico are clear and explicit. It is difficult to believe that the appellant did not understand the import of the document to which he affixed his dignature. Further, documents submitted by appellant attest that he knew Mexican law required him to make a choice between United States and Mexican nationality.

In Terrazas v. Haig, 653 F. 2nd at 288, the plaintiff made a similar declaration of allegiance to Mexico and made an explicit renunciation of his American nationality, There the Court concluded:

> Plaintiff's knowingly and understandingly taking an oath of allegiance to Mexico and an explicit renunciation of United States citizenship is a sufficient finding that plaintiff intended to relinquish his citizenship,

Similarly, in the earlier case of Matheson v. United States, 400 F. Supp. 1241 (S.D.N.Y. 1975), aff'd 532 F. 2d 809 (2nd Cir. 1976), the Court stated:

> An oath expressly renouncing United States citizenship as is required by the 1949 amendment /to the Mexican law of nationality and naturalization/ would leave no room for ambiguity as to the intent of the applicant,

Moreover, the taking of an oath which contains both an express affirmation of loyalty to the country where citizenship is sought and an express renunciation of loyalty to the country where citizenship has been maintained "effectively works renunciation of American citizenship because it evinces an intent by the citizen to so renounce," Richards v. Secretary of State, CV 80-4150, C.D. Cal, (1982), aff'd 752 F. 2d 1413 (9th Cir. 1985).

Furthermore, in filling out the citizenship questionnaire at the Consulate General on January 12, 1983, appellant signed a statement captioned "Voluntary Relinquishment of U.S. Nationality," wherein he stated that he had pledged allegiance to Mexico voluntarily and with the intention of relinquishing his United States citizenship.

Nothing of record indicates that appellant performed any subsequent act that would cast doubt on the meaning of the declaration of allegiance he made to Mexico. He accepted the certificate and apparently enjoyed the benefits conferred on him. Arguably, he would have preferred to hold both nationalities, but knew he might not do so. Reluctance to surrender United States nationality expressed nearly 20 years after the event does not, in the face of the unambiguous language of the application for a certificate of Mexican nationality, vitiate his intent as expressed in the words he signed on the application for the certificate.

In short, appellant's words and conduct manifest an intention to transfer his allegiance from the United States to Mexico. His oath of allegiance to Mexico placed him in a position where he was no longer able legally to enter or perform the rights and duties of a United States citizen.

On all the evidence, we believe that the Department has shown that appellant intended do relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico and expressly renounced his United States citizenship.

IV

Upon consideration of the foregoing and the entire record, we conclude that appellant expatriated himself on February 11, 1965. Accordingly, we affirm the Department of State's determination of loss of appellant's nationality.

Alan G. James, Chairman

Mary E. Hoinkes, Member

Howard Meyers, Member